

# WICHITA POLICE DEPARTMENT

## POLICY NO. 516

<b>SUBJECT: INFORMANTS</b>	
<b>Effective Date: 5/4/2018</b>	<b>Distribution: All Personnel</b>
<b>Reviewed/Approved Date: 4/30/2018</b>	<b>Review Next Date: April 2020</b>
<b>Approved By: Executive Staff</b>	<b>Amends/Rescinds: 7-08-2013</b>
<i>This Policy is for departmental use only and does not apply in any criminal or civil proceeding. This Policy should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this Policy will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting</i>	

### I. PURPOSE

In some instances, a successful investigation cannot be conducted without the use of confidential informants (CIs). While the use of CIs can be an effective tool, it can be undermined by misconduct of the CI or improper management by the controlling officer. The purpose of this policy is to provide protocols for the control and use of CIs.

### II. POLICY

It is the policy of the Wichita Police Department to take necessary precautions when utilizing CIs by developing sound informant control procedures.

### III. DEFINITIONS

**Confidential Informant (CI):** An individual requiring anonymity who provides useful information, directed assistance, or both, that enhances criminal investigations and furthers the mission of the Wichita Police Department, usually in exchange for financial or other consideration.

**Confidential Reliable Informant (CRI):** A person who has furnished reliable information regarding criminal activity or, under the specific control of a controlling officer, performed an investigative activity.

**Cooperating Defendant (CD):** A person who has been arrested or is subject to arrest and prosecution for a city, state or federal offense, and who furnishes information regarding criminal activity or, under the specific control of a controlling officer, performs an investigative activity. This person may or may not expect future consideration for his/her cooperation in the form of judicial or prosecutorial consideration or assistance. If not signed up immediately, a CD may be used within twelve (12) hours of the arrest or event justifying the arrest to conduct an operation.

Source of Information (SOI): A person who, without compensation (money or consideration on any criminal or traffic matter), furnishes information regarding criminal activity. A source of information is not subject to the confidential informant requirements.

Confidential Informant File: File maintained to document all information that pertains to a CI.

Unreliable Informant File: File containing information pertaining to an individual who has failed at following an established written CI agreement and has been determined to be generally unfit to serve as a CI.

Compelling Public Interest: For purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious negative consequence for persons, property, or public safety and therefore demand action.

Controlling Officer: The officer, detective or supervisor primarily responsible for supervision and management of a CI.

#### IV. PROCEDURES

##### A. Initial Suitability Determination

1. An officer requesting use of an individual as a CI shall complete the required paperwork to obtain the confidential informant code number (CI number). The paperwork required consists of, a complete WPD Personal History Sheet (form 322-003), Confidential Contributor Identifier card (form 322-507), a signed Cooperating Individual Agreement, current photograph of the CI and a thorough background check (local and NCIC through Interstate Identification Index). The officer and his/her supervisor will discuss the CI's suitability to assist law enforcement. Factors to be consider during the initial conversation between the officer/detective and supervisor are listed below. Once the CI paperwork is completed it shall be forwarded along with the initial CI debriefing notes (original or copies) to the Special Investigations Bureau Undercover Section Commander for review and the assignment of a CI number. CI Packets that are incomplete will not be issued a CI number. If the Undercover Section Commander has concerns with the use of the CI he/she will contact the officer's supervisor.
  - a. Age, sex, and residence
  - b. Employment status or occupation
  - c. Affiliation with legitimate businesses and illegal or suspicious enterprises
  - d. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
  - e. Relationship with the target of an investigation
  - f. Motivation in providing information or assistance
  - g. Risk of adversely affecting an existing or future investigation

- h. Extent to which provided information can be corroborated
  - i. Prior record as a witness
  - j. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged with a crime
  - k. Risk to the public or as a flight risk
  - l. Substance abuse concerns
  - m. Relationship to anyone in law enforcement
  - n. Risk of physical harm to the potential CI or his or her immediate family or relatives for cooperating with law enforcement
  - o. Any prior or current service as a CI with this or another law enforcement organization
2. Prior to an individual's use as a CI, the officer's supervisor and the Undercover Section Commander or his/her designee shall review the suitability of the CI and determine if the individual is authorized to serve as a CI.
  3. Any information that may negatively affect a CI's suitability during the course of his or her use shall be documented in the CI's file and be forwarded to the Undercover Section Commander as soon as possible.
  4. Supervisors shall review informant files regularly with the controlling officer and shall attend debriefings of CIs periodically as part of the informant management process. These meetings will be documented in the CI file.
  5. No member of the Wichita Police Department shall make promises or guarantees of preferential treatment within the criminal justice system to any potential or current informant without the prior approval from the prosecuting authority.
  6. CI contracts shall be terminated and the CI file placed in inactive status when the CI has not been used for one (1) year or more. Inactive CIs may be reactivated as needed. Inactive CI files will be kept in a separate area of the locked cabinet and maintained for at least two (2) years.
  7. The Undercover Section Commander will maintain a permanent log of the informants CI number, name, date of birth, controlling officer and when active/inactive.
  8. The Undercover Section Commander shall ensure that any CI whose services are no longer being utilized or the CI has been placed in the unreliable informant file be notified that they are no longer a confidential informant with the Wichita Police Department. The information (officer name and date/time) pertaining to the notification shall be included in the CI file. If contact cannot be made with the CI every attempt (officer name and date/time) to contact the CI shall be noted in the CI file.

**B. Special CI Approval Requirements**

Certain individuals who are being considered for use as a CI require special review and approval. In all instances, the Wichita Police Department Special Investigations Bureau Commander or his/her designee shall be consulted prior to the use of these individuals as CIs. Others including representatives from the Law Department, State or Federal Prosecutors, Probation and Parole shall also be consulted depending on the circumstances. These individuals requiring special review include the following but may include others:

1. Juveniles
  - a. Use of a juvenile under the age of 18 as a CI may be undertaken only with the written authorization of the individual's parent(s) or guardian(s). The juvenile affidavit may be obtained from SIB supervision.
  - b. Authorization for such use should be granted only when a compelling public interest can be demonstrated.
2. Individuals obligated by legal privilege of confidentiality (lawyer, clergy and doctors etc.)
3. Government officials or high profile individuals
4. Individuals on probation or parole
  - a. This category includes persons who are in the custody of local or state departments of corrections or under their supervision in the community through probation, parole, supervised release, or other programs. It may also include persons who are current or former participants of the federal witness security program.
  - b. Use of such individuals as CIs requires additional approval from the authority/agency that is supervising the individual wanting to be a CI.

**C. General Guidelines for Handling CIs**

1. CIs shall be treated as assets of the Wichita Police Department (WPD), not the controlling officer/detective.
2. CIs shall not be used without authorization of the WPD through procedures identified in this policy.

3. CIs shall not be used to gather information purely of a political nature or for other information-gathering efforts that are not connected with a criminal investigation.
4. CI activity Outside Jurisdictional Boundaries
  - a. CIs shall not engage in intelligence gathering or meet with a subject(s) under investigation in locations outside of the jurisdictional boundaries of the WPD, unless authority is granted by the Commander of the Special Investigations Bureau.
  - b. CIs who participate in unplanned or unanticipated activities or meet with a subject(s) under investigation in a location outside of the jurisdictional boundary of the WPD shall promptly report that activity or meeting to their controlling officer.
  - c. Investigators handling CIs who engage in operational activity in locations outside the jurisdictional boundaries of the WPD shall coordinate with counterparts in law enforcement agencies that have jurisdiction in that location where the CI will operate before any activity occurs, or in a timely manner after unanticipated activity occurs and is brought to the attention of the handler.
  - d. Any decision to defer or delay notice to or coordinate with an outside agency having jurisdiction in the area where a CI has or may operate must be documented, reviewed, and approved by the Commander of the Special Investigations Bureau or his/her designee.
5. All CIs shall sign and abide by the provisions of the Wichita Police Department CI agreement. The CI's controlling officer shall discuss each of the provisions of the agreement with the CI, in addition to the items listed below (a through h):
  - a. CIs are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon while performing activities as a CI.
  - b. CIs found engaging in any illegal activity beyond what is authorized by the WPD and conducted while under the supervision of a handler, will be subject to prosecution.
  - c. CIs are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions shall be explained to each CI.

- d. CIs are prohibited from engaging in self-initiated information or intelligence gathering without WPD direction and approval.
  - e. Every reasonable effort will be taken to ensure the confidentiality of the CI but, upon judicial order, he or she may be required to testify in open court.
  - f. CIs may be directed to wear a listening and recording device.
  - g. CIs shall be required to submit to a thorough search of their person and belongings before and after a controlled purchase.
  - h. Any time a CI compromises his/her confidentiality, or the confidentiality of any member of the Wichita Police Department or any other law enforcement agency, the services and/or use of that CI will cease. The controlling officer will notify their supervisor immediately. The CI file will be placed in the Unreliable Informant File and the CI will be notified of their inactive/unreliable status. This shall be documented in the CI file.
- 6. Officers shall take the utmost care to avoid conveying any confidential investigative information to a CI, such as the identity of other CIs, surveillance activities, or search warrants, other than what is necessary and appropriate for operational purposes.
  - 7. No member of the Wichita Police Department shall knowingly maintain a social relationship with a CI, or otherwise become personally involved with a CI beyond actions required in the performance of duty. Members of the WPD shall not solicit, accept gratuities from, or engage in any private business transaction with a CI.
  - 8. Meetings with a CI shall be conducted in private with another officer present and shall be documented and subsequently entered into the individual's CI file.
  - 9. Controlling officers shall develop and follow a communications strategy and plan with the CI that minimizes, to the greatest extent possible, the risk of discovery or compromise of the relationship between the WPD and the CI. This plan should also aim to prevent the detection, compromise, or interception of communications between the controlling officer and the CI.
  - 10. Whenever possible, officers shall corroborate information provided by a CI and document efforts to do so.
  - 11. No CI who is suspected of being under the influence of drugs or alcohol will be utilized at that time as a confidential informant.

12. The name of a CI shall not be included in an affidavit for a warrant unless judicial authority is obtained to seal the document from public record or the CI is a subject of the investigation upon which the affidavit is based. Additionally, officers shall scrupulously avoid providing details of CI actions or involvement in arrest reports and other documents available to the public.
13. Controlling officers are responsible for ensuring that information of potential value to other Divisions, Bureaus or Sections of the Wichita Police Department is provided promptly to authorize supervisory personnel.
14. Individuals leaving employment with the WPD have a continuing obligation to maintain as confidential the identity of any CI and the information he or she provided unless obligated to reveal such identity or information by law or court order.

**D. Establishment of an Informant File System**

1. The Special Investigations Bureau Undercover Section Commander shall be responsible for developing and maintaining master CI files.
2. A file shall be maintained on each CI deemed suitable by the Wichita Police Department.
3. An additional file shall be established for CIs deemed unsuitable during initial suitability determinations or at a later time.
4. Each file shall be coded with an assigned confidential informant code number for identification within the system and shall include the following information:
  - a. Complete a WPD Personal History sheet (form 322-003)
  - b. Complete a WPD Confidential Contributor Identifier Card (form 322-507)
  - c. Complete and have the CI read and sign the Cooperating Individual Agreement after discussing it with him/her line by line.
  - d. A current photograph of the CI.
  - e. Complete a thorough background check on the CI prior to utilizing the CI. The background check shall include a thorough local and NCIC Interstate Identification Index (Triple I). Verifying if the CI is on probation, parole or some other type of judicial supervision. Pending local, state or federal cases involving the CI. Does the CI have a valid driver's license?
  - f. If the CI has been utilized by other law enforcement agencies, the controlling officer shall verify this and any reliability issues the agency had with the CI. This shall be documented in the CI file.

- g. A thorough de-brief with the CI including any knowledge of criminal activity (Narcotic, Persons Crimes or Property Crimes) in Wichita and other locations, gang affiliations, associates and motivation.
- 5. CI files shall be maintained in a secure area by the Undercover Section Commander of the Special Investigations Bureau.
- 6. The file supervisor shall ensure that information concerning CIs is strictly controlled and distributed only to officers and other authorities who have a need and a right to such information.
- 7. CI File Review
  - a. Sworn personnel may review an individual's CI file only upon the approval of the Wichita Police Department Special Investigations Bureau Commander or his/her designee.
  - b. The requesting officer shall submit an Officer's Report through channels explaining the need for review. A copy shall be maintained in the individual's CI file.
  - c. Officers shall not remove, copy, or disseminate information from the CI file.
  - d. CI files shall be reviewed only in designated areas of the law enforcement facility and returned as soon as possible to their secure file location.
- 8. All disclosures or access to CI files shall be recorded by the file supervisor, to include information such as the requesting officer or agency, the purpose of access or disclosure, the information conveyed, and the date and time of access or dissemination.
- 9. No portion of an individual's CI file shall be entered into any other electronic or related database without prior approval from a supervisor.

**E. Monetary Payments**

- 1. All monetary compensation paid to CIs shall be commensurate with the value of the information or assistance provided to the WPD.
- 2. All CI payments shall be approved in advance by the controlling officer's supervisor or his/her designee.



3. Officers shall provide accounting of monies received and documentation for confidential funds expended by using the write off Bureau Expense & Money Check Out Report.
4. Two (2) officers shall be present when making payments or providing funds to CIs.
5. Any deviation from paying the CI in person shall be approved by the Special Investigations Bureau Commander or his/her designee.
6. CIs working for consideration on a criminal case shall not be paid money for their assistance, cooperation or information provided. Any exception must be approved by the Special Investigations Bureau Commander or his/her designee. A CI cannot have another individual work off charges on his/her behalf unless approved by the prosecuting authority handling the CI's case.
7. The Special Investigations Bureau Commander shall ensure that the process for authorization, disbursement, and documentation of CI payments, as well as the accounting and reconciliation of confidential funds, is consistent with WPD policy.
8. If a CI is authorized to work with another law enforcement agency, financial payments shall be coordinated between the agencies in a manner that is proportionate to the assistance rendered to each agency and consistent with provision of this policy.